

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"E" BENCH, MUMBAI**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.5596/MUM/2025**  
**(Assessment Year: 2019-20)**

**ITA No.5597/MUM/2025**  
**(Assessment Year: 2020-21)**

**Kiran Atmaram Singhania,**

Shop No.18 Pratapmane HSG Complex,  
Near Rajan pada Winking R Malad West,  
Mumbai - 400064  
PAN : AAYPS5668Q

..... Appellant

v/s

**Deputy Commissioner of Income Tax,  
Central Circle – 4(2),**

Kautilya Bhawan, C 41-43,  
Avenue 3, Near Videsh Bhavan,  
G Block BKC, Gilban Area,  
Bandra Kurla Complex, Bandra East,  
Mumbai – 400051

..... Respondent

Assessee by : Shri Bharat Kumar

Revenue by : Shri Ritesh Misra, CIT-DR

Date of Hearing – 23/03/2026

Date of Order - 27/03/2026

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The assessee has filed the present appeals against the common impugned order dated 03.09.2025, passed under section 250 of the Income Tax Act 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals)-52, Mumbai [*"learned CIT(A)*], for the assessment years 2019-20 and 2020-21.

2. Since both appeals pertain to the same assessee, involving similar issues arising out of a similar factual matrix, these appeals were heard together as a matter of convenience and are being decided by way of this consolidated order.

3. The solitary grievance of the assessee is against the addition made under section 69 of the Act on account of the alleged on-money payment in cash for the purchase of shops by the assessee.

4. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case are that the assessee, an individual, is deriving income, *inter alia*, from the proprietary business of Cell Zone Mobiles. The assessee filed her original return of income for the assessment years under consideration. Pursuant to the search and seizure action carried out under section 132 of the Act on Rubberwala Group, wherein the premises of M/s Rubberwala Housing and Infrastructure Ltd. ("*RHIL*"), its promoters and Director- Shri Tabrez Shaikh, and a key employee of the Group, Shri Imran Ansari, who was handling sale and registration of shops in "*Platinum Mall*" project of RHIL were covered, notice under section 153C of the Act was issued to the assessee on 10.12.2022. In response to the notice, the assessee filed her return of income, declaring income similar to the original return for the years under consideration. During the search and seizure action on Rubberwala Group, the residence of Shri Imran Ansari at 109, 2nd Floor, Prabhat Sadan, 109/ 120 RBC Marg, Agripada, Mumbai Central, Mumbai – 400011, was covered. In his statement recorded during the course of the search, Shri Imran Ansari stated that he has been working

with the Rubberwala Group of entities since 2010 and, inter alia, has been handling the sale and registration of shops in the "*Platinum Mall*" project of RHIL. In his statement, Shri Imran Ansari submitted that the total price of shops comprises cash components and banking channel components, which are determined by the Director of RHIL. In his statement, Shri Imran Ansari also submitted that after the buyer chooses the shop which he intends to buy, details of the shop were provided to him and once the buyer agrees with the details and terms and conditions, token amount which is around Rs. 0.50 lakhs to 2 lakhs are charged in cash and entry of same is made in a small diary given to the buyer. During the search proceedings, a 16 GB pen drive was recovered from the possession of Shri Imran Ansari, wherein data in an Excel sheet was maintained by Shri Imran Ansari. Shri Imran Ansari accepted that the pen drive belongs to him and also accepted that the pen drive contains data maintained for the sale of shops in Platinum Mall. He also explained that these data were prepared by him. Since the details of shops purchased by the assessee, along with the payment made in cash and cheque, were mentioned in the data available on the pen drive, the assessee was asked to show cause as to why the payment made in cash for the purchase of the shops should not be treated as an unexplained investment under section 69 of the Act. The assessee did not respond to the show cause notice.

5. The Assessing Officer, vide separate assessment orders passed under section 153C of the Act, treated the unaccounted cash paid by the assessee against the purchase of shops amounting to Rs.5,00,000/- for the assessment year 2019-20 and Rs.28,44,250/- for the assessment year 2020-21, as

unexplained investment and added the same to the total income of the assessee under section 69 of the Act.

6. The learned CIT(A), vide common impugned order for the assessment years under consideration before us, rejected the contentions of the assessee both on jurisdiction as well as on merits and held that the details available in the pen drive are duly corroborated by the statement of Shri Imran Ansari recorded during the course of search proceedings. The learned CIT(A) vide impugned order also rejected the reliance placed by the assessee on the decision of the Co-ordinate Bench of the Tribunal in Rajesh Jain, in ITAs No.3842 and 3841/Mum./2023, wherein, as per the assessee, a similar addition on the basis of the search conducted on Rubberwala Group was deleted. Accordingly, the learned CIT(A), vide impugned order, dismissed the assessee's appeal for the assessment years 2019-20 and 2020-21 and upheld the additions made by the AO. Being aggrieved, the assessee is in appeal before us.

7. During the hearing, the learned Authorised Representative ("*learned AR*") reiterated the submissions made by the assessee before the learned CIT(A) and submitted that no cash payment was made to the developers/builders for the purchase of the shops, and the entire payment was made by way of account payee cheques. As regards the statement of Shri Imran Ansari and the details found in the pen drive seized during the course of the search, the learned AR submitted that neither the statement nor the seized material/document/pen drive was confronted with the assessee. Further, it was submitted that the Excel sheet and third-party statement were

relied upon by the Revenue without corroborating the same with any independent evidence. The learned AR submitted that, in a similar factual matrix, additions based on similar information/documents have been deleted by the Co-ordinate Benches of the Tribunal.

8. On the other hand, the learned Departmental Representative ("*learned DR*") vehemently relied upon the order passed by the lower authorities.

9. Having considered the submissions of both sides and perused the material available on record, we find that the assessee's husband (now deceased) purchased shops No.203 and 216 in "*Platinum Mall*". It is evident from the record that the Revenue's sole reliance is on the statements of Shri Imran Ansari recorded during the search and the Excel sheet found from the pen drive retrieved from his possession during the search. We find that on the basis of identical statements and information in the pen drive, a similar addition was deleted by the Co-ordinate Bench of the Tribunal in Praveen Khetaramm Purohit vs DCIT, in ITAs No. 4742 to 4744/Mum/2025, vide its order dated 15.10.2025. From the perusal of the said order, which was relied upon by the learned AR during the hearing, we find that the Co-ordinate Bench also took note of the earlier decision of the Tribunal in Rajesh Jain (*supra*). The Co-ordinate Bench of the Tribunal, finding the details found from the possession of Shri Imran Ansari as uncorroborated with any independent evidence and relying upon various judicial precedents, directed the AO to delete the addition made under section 69 of the Act in the hands of the taxpayer on the basis of a search and seizure action conducted on the

Rubberwala Group and its employee. The relevant findings of the Co-ordinate Bench in Praveen Khetaramm Purohit (*supra*) are reproduced as follows: -

"8. We have heard the arguments for both the parties and have also perused the material placed on record, judgements cited before me and the orders passed by the revenue authorities. From the records, we noticed that the assessment was completed u/s 153C on account of the fact that a search and seizure action was conducted on 17.03.2021 on Rubberwala group. In search action, premises of M/s. Rubberwala Housing & Infrastructure Ltd (RHIL), its promoter and director-Shri Tabrez Shaikh, and a key employee of Rubberwala group Shri Imran Ansari, who was handling sale & registration of shops in "Platinum Mall" project of RHIL were covered. Among others, statement of these persons were recorded on oath on various dates during the course of search as well as post search proceedings. The employee of Rubberwala group confirmed that the cash has been collected from the respective buyers of the shops. However, on the other hand, the assessee denied payment of cash. We noticed that during the search a pendrive with the details of cash transactions with respect to Rubberwala group was found, which was confirmed through statement of Shri Imran Ansari recorded U/s 132(4) of the Act and on this basis, 153C order was framed and the same was upheld by the Ld. CIT(A).

9. We noticed that Ld. CIT(A) although referred the decision of the coordinate bench in case of Rajesh Jain on identical issue but misplace its reliance. After having gone through the basic facts of Rajesh Jain case which is mentioned by Ld. CIT(A) in its order and the same is reproduced as under:

5.1. On 17.03.2021, the residential premise of the assessee was also covered by way of search action u/s 132 of the IT Act, 1961. Search action was also initiated on Rubberwala group on 17.03.2021. In such action along with premises (offices/sites/others) of Rubberwala group entities, residences of various key persons including its promoter and director Shri Tabrez Shaikh, and Shri Imran Ansari - a key employee of Rubberwala group handling sale & registration of shops in "Platinum Mall" project of RHIL were covered under section 132 of the Act. Among others, statement of these persons were recorded on oath on various dates during search as well as post search proceedings.

5.2. During the action on Rubberwala Group, among other, residence (at 109, 2nd Floor, Prabhat Sadan, 109/120 RBC Marg, Agripada, Mumbai Central - 400011) of Shri Imran Ashfaque Ansari was covered under section 132 of the I.T. Act, 1961. His statement was also recorded on oath at his residence. Vide question no. 11 of the said statement dt. 17.03.2021, Shri Imran Ansari was questioned about his roles and responsibilities in M/s. Rubberwala Housing & Infrastructure Ltd (RHIL). In response, Shri Imran Ansari stated that he has been working with Rubberwala group of entities since 2010 and inter-alia handling sale and registration of the shops in "PlatinumMall" Project of M/s. Rubberwala Housing & Infrastructure Ltd (RHIL).

5.3. Shri Imran Ansari in his response to question no. 13 & 14 of the said statement explained the complete procedure of the of the sale of shops in the "Platinum Mall" project. While explaining further about the price structure of the shops, Shri Imran Ansari in response to Q. no. 15 categorically revealed that the total price of the shops contains cash component and banking channel component, and these components are decided by Shri Tabrez Shaikh (Director/CMD of RHIL

and Promoter of Rubberwala Group). On probing further, Shri Imran Ansari, in response to Q. no. 16, stated that these prices, as decided by Shri Tabrez Shaikh, are communicated to him orally. He also revealed in response to Q. no. 17 of the said statement that data related to shops is maintained by him in excel sheets. Corroborating to the fact that data is being maintained by Shri Imran Ansari in excel sheet, during search proceedings at the residence of Shri Imran Ansari, a 16GB Pendrive was retrieved from his possession. The said pen drive is accepted by Shri Imran Ansari belonging to him and he also accepted that this pen drive is containing data maintained for the sale of shops in Platinum Mall. Shri Imran Ansari explained that this data is prepared by him. Shri Imran Ansari's this acceptance also corroborates with the fact that the said data was retrieved from the residential premises of Shri Imran Ansari and not from any office of Rubberwala Group.

5.4. It was ascertained that the data is being maintained by Shri Imran Ansari in an excel file namely "consolidated 1 2 3 balance". In the said file sheets with different name viz "Master", "Payment" and "Cheque" etc. are found to be maintained. It is also found out that in respect of the sale of shops in the said project, comprehensive data is being maintained in these excel sheets, and in this regard, it is important to mention that the sheet "Master" is so elaborate that the data in the said sheet is spread across 98 columns. Shri Imran Ansari has explained all 98 columns of "Master" sheet and such explanation of each and every column by Shri Imran Ansari further support the fact that he was maintaining the said data and therefore could explain all these columns with relevance and purpose. Shri Imran Ansari in response to Question no. 22, 23 and 24, has explained in detail the meaning and relevance of each and every column. In column B, against the name of 'Raj Bhai Jain'/'Raj Bhai Jain(I.S)', total 27 shops have been entered. Further, these 27 shops are stated (by Shri Imran Ansari) to be booked by the assessee only. Also, Shri Tabrez Ahmed Shaikh, Director and Promoter of the RHIL, while deposing statement during post search proceedings on 19.08.2021 categorically confirmed the admission made by Shri Imran Ansari, and has confirmed the data of the said excel to be true by confirming facts stated by Shri Imran Ansari in his statement. It is also important to note here that the phone number mentioned above i.e., 9892196071 against all 27 shops, is of Shri Rajesh Jain.

5.5. Regarding the frequency of updating the said excel file/sheet, Shri Imran Ansari, in response to Q. no. 25, stated that this sheet is updated on the same day when a payment is received either in cash or cheque (or banking channel). The column A to AR of the sheet "Master" are stated to be updated till 16.03.2021 and other sheets of the said excel file are also stated to be updated till 16.03.2021. It is revealed in the above response that he takes the parties to Shri Abrar Ahmed (who during the search established to be a person handling cash for the Rubberwala Group). Shri Abrar Ahmed, after receiving the cash confirms to Shri Imran Ansari who update the diaries and the said excel file. Such detailed mechanism in place further upholds the facts stated by Shri Imran Ansari on oath. It is also important to note here that Shri Imran Ansari also used to call and follow up with the buyers on the numbers saved in his data. As aforementioned, the number, for the shops for which the assessee has paid the cash component, is mentioned as 9892196071, which is the assessee's own number. Thus, it makes clear that for the cash payment part, for all the above mentioned 27 shops, Shri Imran Ansari used to follow up with Shri Rajesh Jain/assessee only.....

10. We also noticed that the decision of the Coordinate Bench of ITAT in the case of Rajesh Jain in ITA No. 3842 & 3841 & ITA No. 3954, 3952, 3951 and 3950/Mum/2023 on the identical facts is reproduced herein below:

12. *The appeal filed by the revenue for AY 2020-21 is with regard to the relief granted by Ld CIT(A) holding that the cash payments relating to the shops purchased by others cannot be assessed in the hands of the assessee. The decision rendered by us in AY 2018-19 and 2019-20 on an identical issue on merits in the earlier paragraphs would apply in this year also. Following the same, we affirm the order passed by LdCIT(A) on this issue.*

13. *In the appeal filed by the assessee, the addition of alleged cash payment of Rs.18,64,200/- in respect of purchase of shop confirmed by Ld CIT(A) is being assailed. 14. We noticed earlier that the assessee had purchased a shop in the commercial premises developed by Rubberwala group. During the course of search conducted in their hands, incriminating documents containing details of cash collected on sale of various shops were found. The employee of Rubberwala group confirmed that the cash has been collected from the buyers of shops. However, the assessee denied payment of cash. However, the AO relied upon the materials found in the case of Rubberwala group and accordingly made addition of Rs.18,64,200/- in AY 2020-21. The LdCIT(A) also confirmed the same.*

15. *The Id A.R submitted that the addition was made on the basis of third party statement and documents found from the premises of third party. As per the deposition made by the employee of Rubberwala group, the buyers were given a diary, in which, the details of cash received were acknowledged. The Ld A.R submitted the search officials did not find any such diary with the assessee during the course of search operation conducted in his hands. Hence the statement so given by the employee stands disproved. He submitted that the AO has simply relied upon third party statement without bringing any independent material to support the same. The AO also did not provide the opportunity of cross examination despite being asked by the assessee. Accordingly, by placing reliance on various case laws, the Ld A.R submitted that this addition should be deleted. 16. We heard Ld D.R and perused the record. We notice that the AO has made the addition on the basis of evidence found in the premises of third party and also on the basis of deposition made by the employee of the third party. No corroborative material was brought on record to support the statement so given, which is mandatory when the assessee denies any such payment. Further, the AO also did not provide opportunity of cross examination to the assessee, even after the said request was made by the assessee. Under these set of facts, we are of the view that the impugned addition of Rs.18,64,200/- cannot be sustained. In this regard, we may take support from the decision rendered by SMC bench of Mumbai Tribunal in the case of Naren Premchang Nagda vs. ITO (IT Appeal No.3265/Mum/2015 dated 08-07-2016), wherein an identical issue was decided as under:-*

17. *We also notice that the AO did not provide opportunity to cross examine the persons from Rubberwala group, on whose statements the AO had placed reliance upon. The Hon"ble Supreme Court has held in the case of Andaman Timber Industries vs. Commissioner of Central Excise (2015)(62 taxmann.com 3)(SC) that not providing opportunity to cross examine is a serious flaw and it will make the order nullity, as it amounts to violation of principle of natural justice. We are of the view that the above said decision of Hon"ble Supreme Court shall apply to the facts of the present case.*

11. *From the above we find that the Coordinate bench has consider the same facts and rightly decided the issue in favour of the assessee and since the facts of the present case are also identical with the facts of Rajesh Jain's (supra) case, therefore the said decision will be application on the facts of the present case as well. Moreover, the assessee categorically denied having paid any amount in cash over and above the agreement value. The AO has neither confronted assessee with any of the material found during the search on*

*Rubberwala group and even no evidence or seized document has been referred to where any name of the assessee has been explicitly mentioned on account of paying any 'on-money'.*

12. *Although it has been claimed in the order of assessment that the assessee had paid on money, but again no such statement has been confronted, neither the seized material /documents /pendrive was confronted to the assessee nor the copy of statement of Key person was confronted.*

13. *Therefore, in our view, the information if any found in the pendrive etc., cannot be considered as 'credible evidence', unless they have been corroborated with any other evidence. Since the assessee was not provided with the adverse material, if any, based on which notice u/s 153 of the Act, was issued, in our view, it hampers the primary and fundamental requirement of natural justice.*

14. *As far as the information claimed in pendrive is concerned, the same was not found from the possession of the assessee but was found as per order of assessment, during the search and seizure conducted in the case of third party therefore, in the absence of corroborative evidence to establish that the contents of pendrive are correct and authenticated to the extent assessee paid 'on- money' in cash, no addition can be made and even otherwise during the entire reassessment proceedings the veracity and reliability of the data recorded in the pendrive was not checked or tested. Therefore, in such a scenario no addition is warranted in the case of assessee. Reliance in this regard has been placed on the decision in case of Heena Dashrath Jhanglani ITA no.1665/Mum./2018 (Assessment Year : 2007-08) wherein the Coordinate Bench of ITAT had decided the issue in favour of assessee and the relevant portion is being reproduced herein below:*

10. *I have considered rival submissions and perused material on record. Undisputedly, the genesis of the addition made of 42 lakh on account of alleged payment of on-money in cash towards purchase of a flat lies in a search and seizure operation conducted in case of Hiranandani Group and related persons. Though, in the assessment order the Assessing Officer has not discussed in detail the nature of incriminating material/ evidence available on record to indicate payment of on-money in cash by the assessee to M/s. Crescendo Associates, however, from the show cause notice dated 4th March 2015, which is reproduced by the Assessing Officer in the assessment order, it appears that the incriminating materials are in the form of pen drive found and seized from the residence of one of the employees of Hiranandani Group and a statement recorded under section 132(4) of the Act from Shri Niranjan Hiranandani, Director and Promoter of the Group, wherein, the details of on- money paid by buyers / prospective buyers to Hiranandani Group concerns are mentioned and further, in the statement recorded under section 132(4) of the Act on 14th March 2014, Shri Niranjan Hiranandani, has admitted receipt of on-money in cash towards sale of flats / shops. Thus, it is clear that except these two pieces of evidences the Assessing Officer had no other evidence on record which demonstrates that the assessee had paid on-money in cash for purchase of the flat. It is further relevant to observe, from the assessment stage itself the assessee has requested the Assessing Officer to provide him with all adverse materials and full text of the statement recorded under section 132(4) of the Act from Shri Niranjan Hiranandani. The assessee had also requested the Assessing Officer for allowing her to cross-examine Shri Niranjan Hiranandani and other parties whose statements were relied upon. Apparently, this request of the assessee was not acceded to by the Assessing Officer. When the assessee took up the aforesaid issue before the first appellate authority, the learned Commissioner*

(Appeals) in letter dated 18th July 2016, had clearly directed the Assessing Officer to provide the assessee all adverse materials / documentary evidences available with him indicating payment of on-money. However, on a perusal of the remand report dated 23th June 2017, a copy of which is at Page-53 of the paper book, it is very much clear that the Assessing Officer has completely avoided the issue and there is no mention whether the assessee was provided with all the adverse material and if, not so, whether he has provided them to the assessee as per the directions of the learned Commissioner (Appeals). Thus, from the aforesaid facts, it is patent and obvious that the addition of ` 42 lakh made on account of on-money payment in cash is without complying with the primary and fundamental requirement of rules of natural justice. It is well settled proposition of law that if the Assessing Officer intends to utilize any adverse material for deciding an issue against the assessee he is required to not only confront such adverse materials to the assessee but also offer him a reasonable opportunity to rebut / contradict the contents of the adverse material. Further, the assessment order reveals that the Assessing Officer has heavily relied upon the statement recorded from Shri Niranjan Hiranandani, for making the disputed addition. However, it is the allegation of the assessee, which prima-facie appears to be correct, that the Assessing Officer has not provided the full text of such statement recorded and has also not allowed the assessee an opportunity to cross-examine Shri Niranjan Hiranandani, and other persons whose statements were relied upon. This, in my view, is in gross violation of rules of natural justice and against the basic principle of law. In this context, I may refer to the decision of the Tribunal, Mumbai Bench, in Nikhil Vinod Agarwal (supra). Thus, for the aforesaid reason, the addition made cannot be sustained.

11. Even otherwise also, the addition made is unsustainable because of the following reasons. As discussed earlier in the order, the basis for addition on account of on-money is the information contained in the pen drive found during the search and seizure operation and the statement recorded under section 132(4) of the Act. As regards the information contained in the pen drive, it is the contention of the assessee that the said pen drive was not found from the possession of the assessee but in course of search and seizure operation conducted in case of a third party. Therefore, in absence of further corroborative evidence to establish that the contents of the pen drive are correct and authentic to the extent that the assessee paid on-money in cash, no addition can be made under section 69B of the Act. Further contention of the assessee is that in the statement recorded under section 132(4) of the Act, Shi Niranjan Hiranandani has not made any reference to the assessee, therefore, in absence of any other corroborative evidence to establish that assessee has paid on-money in cash, no addition can be made. I find substantial merit in the aforesaid submissions of the assessee. In my view, neither the information contained in the pen drive nor the statement recorded under section 132(4) of the Act from Shri Niranjan Hiranandani are enough to conclusively establish the factum of payment of on-money by the assessee. At best, they can raise a doubt or suspicion against the conduct of the assessee triggering further enquiry / investigation to find out and bring on record the relevant fact and material to conclusively prove the payment of on-money by the assessee over and above the declared sale consideration. Apparently, the Assessing Officer has failed to bring any such evidence / material on record to prove the payment of on-money by the assessee. More so, when the assessee from the very beginning has stoutly denied payment of on-money in cash. Notably, while dealing with a case involving similar nature of dispute concerning similar transaction with another concern of Hiranandani Group, the Tribunal in case of Shri Anil Jaggi v/s ACIT (supra) has held as under:-

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15. *Reliance has also been placed in the case of Monika Anand Gupta I.T.A. No. 5561/Mum/2018 (A.Y. 2011-12) whereas coordinate bench held as under.*

*6. I have heard both the parties and perused the record. I find that the addition for on-money payment has been done in this case without any corroborative material found from assessee. The addition is solely based upon some statement of the builder. Such additions are not sustainable on the touchstone of Hon'ble Supreme Court decision in the case of CIT vs P.V Kalyana sundasram 164 Taxman 78 (SC). Moreover there is nothing on record to suggest that so called electronic evidence collected by revenue at the builder's office is compliant with the requirement of section 65B of Evidence Act regarding admissibility of electronic evidence. Hence, I set aside the orders of the authority below and direct that the addition be deleted.*

16. *In the case of Mrs. Mamta Sharad Gupta, ITA No.1553/M/2021 Assessment Year: 2011-12, wherein the coordinate bench has held as under:*

*9. Since the sole issue raised in this appeal is covered by the order (supra) passed by the co-ordinate Bench of the Tribunal addition made in this case is not sustainable. Because the addition is made merely on the basis of statement made by one Mr. Suraj Parmar, one of the promoters of Cosmos Group under section 132(4) of the Act without any corroboration. Moreover, statement or any material seized during the course of search under section 132(4) of the Act can only be used against Mr. Suraj Parmar of Cosmos Group and not against the assessee without any corroboration. Excel sheet alleged to have been recovered from the office of builders is also not admissible being not proved under section 65 of the Evidence Act. So in view of the matter, addition made by the AO and sustained by the Ld. CIT(A) is not sustainable in the eyes of law, hence ordered to be deleted. Consequently, appeal filed by the assessee is allowed.*

17. *For the above proposition, we place reliance upon the decision in the case of ITO Vs. Vinod Aggarwal, ITA No. 2573/Mum/2017, ITO Vs. Nikhil Vinod Aggarwal, ITA No. 2574/Mum/2017 Heena Dashrath Jhanglani Vs. ITO, ITA No.1665/M/2018, Padmashree Dr. D.Y. Patil University Vs. DCIT, ITA Nos. 3264 to 3268/Mum/2022.*

18. *From the records we also noticed that no statement was provided to the assessee, and none of the persons, whose statements were relied upon were produced for cross-examination. Even the extract of the statement mentioned in the assessment order does not indicate the name of the assessee.*

19. *Apart, the AO during the course of assessment also failed to provide the opportunity to cross examine of the witnesses, whose statements were relied upon by the revenue which resulted in 'breach of principles of natural justice'. In this regard, reliance is being placed upon the decision of Hon'ble Supreme Court in the case of Andaman Timber Industries Vs. CCE reported in (2015)281 CTR 241 (SC) wherein it has been held that 'failure to give the assessee the opportunity to cross examine witness, whose statements are relied upon, results in breach of principles of Natural Justice. It is a serious flaw which renders the order a nullity'.*

20. *In the case of CIT Vs. Odeon Builders Pvt. Ltd. (418ITR 315), it was held that the 'addition/disallowance made solely on third party information without subjecting it to further scrutiny and denying the opportunity of cross examination of the third party renders the addition/disallowance bad in law'*

21. *In the case of H.R. Mehta v/s Assistant Commissioner of Income-tax, Mumbai 72 taxmann.com110 (Bombay) wherein it was held as under*

*In the light of the fact that the money was advanced apparently by the account payee cheque and was repaid vide account payee cheque the least that the Assessing Officer should have done was to grant an opportunity to the assessee to meet the case against him by providing the material sought to be used against him in arriving before passing the order of assessment. This not having been done, the denial of such opportunity goes to root of the matter and strikes at the very foundation of the assessment and, therefore, renders the orders passed by the Commissioner (Appeals) and the Tribunal vulnerable. The assessee was bound to be provided with the material used against him apart from being permitting him to cross examine the deponents whose statements were relied upon by him. Despite the request seeking an opportunity to cross examine the deponents and furnish the assessee with copies of statements and disclose material, these were denied to him.*

22. *Taking into consideration the entire facts and circumstances and legal propositions as discussed by us above, we direct the AO to delete the addition, consequently these grounds raised by the assessee are allowed."*

10. We find that the Co-ordinate Bench of the Tribunal in Dhiraj Solanki vs DCIT, in ITA No. 6526/Mum/2025, for the assessment year 2019-20, vide order dated 10.02.2026, while dealing with a similar addition on the basis of a search and seizure action carried out under section 132 of the Act on Rubberwala Group, observed as follows: -

*"7. We have considered rival submissions and perused the materials on record. It is evident that the assessee jointly with his brother Shri Praveen Jagadish Solanki had purchased a shop in the Platinum Mall'. In course of search and seizure operation conducted in case of Rubberwala Group and more particularly in the residential premises of Shri Shri Imran Ansari, an employee of Rubberwala Group, a pen drive containing excel sheet was seized wherein, certain transactions relating to sale of shops in 'Platinum Mall were reflected. In course of search and seizure operation, a statement was recorded from Shri Shri Imran Ansari wherein, while explaining the contents of the excel sheets he stated that the excel sheet contained the agreement value and the actual sale price of shops in the mall. He further explained that the difference between the agreement value and actual sale consideration were received in cash from the buyers.*

*8. It is observed, while explaining the modus operandi Shri Imran Ansari in response to Question No.26 had submitted that at the time of booking of shop the buyer is informed about the component of payment to be made in cash or through cheque. In case of cash payment Shri Imran Ansari verified the amount of cash to be accepted from the buyer and takes the buyer to Mr. Abrar Ahmad (cashier working in Rubberwala Housing and infrastructure Ltd. who received the cash from the buyers. After receiving confirmation from Mr.*

*Abrar Ahmad regarding the cash received, Shri Imran Ansari makes necessary entries in the diary given to the buyer at the time of booking of shop mentioning the cash amount along with date of payment and also puts his signature against each entry. Surprisingly, though, shops have been sold to number of buyers however not a single diary has been recovered from any of the buyers to demonstrate the fact that against the cash payment entries have been made in the diary and initiated by Shri Imran Ansari. In fact, except the pen drive containing the excel sheet, the AO has not referred to any other incriminating material.*

*9. Further in response to Question No.15, Shri Shri Imran Ansari has stated that the agreement value is lower than the actual sales consideration. A reference to the response of Shri Imran Ansari to Question No.15 reveals that it only contains the value/price of shops located at different levels. However, the seized material does not explicitly reveal payment of on money by buyers individually. Thus, when the assessee has categorically denied of having paid any cash, merely relying upon a third party statement and limited evidence seized from a third party, assessee cannot be accused of paying on-money in absence of any other corroborative evidence to demonstrate that the facts stated in the statement recorded from the key persons of Rubberwala Group and the excel sheets are authentic. In any case of the matter, in case of the present assessee, the Assessing Officer has made the addition on protective basis. Whereas, the substantive addition made in case of assessee's brother Shri Praveen Jagdish Solanki has been deleted by the very same First Appellate Authority in order dated 18.11.2025 on merits after taking note of all relevant facts. Thus, when the substantive addition has been deleted on merit, the protective addition made at the hands of the assessee cannot survive. Accordingly, we delete the addition."*

11. In the present case also, no diary was recovered from the possession of any person to demonstrate the fact that, against the cash payment, entries were made in the diary by Shri Imran Ansari. Thus, except for the pen drive found in the possession of Shri Imran Ansari, containing the Excel sheet, the AO has not referred to any other incriminating material.

12. During the hearing, the learned AR also relied upon the various other decisions of the Coordinate Bench of the Tribunal, which form part of the case law paper book from pages 1-266, wherein a similar addition on the basis of identical statements recorded during the search on Rubberwala Group and information in the pen drive was deleted.

13. Apart from relying upon the orders passed by the lower authorities, the learned DR could not bring any material on record to deviate from the findings of the Co-ordinate Bench rendered in the aforementioned decisions in similar factual circumstances. Therefore, respectfully following the decisions of the Co-ordinate Bench cited supra, we do not find any merit in the addition made under section 69 of the Act for the assessment years 2019-20 and 2020-21. Accordingly, the impugned additions made under section 69 of the Act for the assessment years 2019-20 and 2020-21 are deleted.

14. In the result, the appeals by the assessee for the assessment years 2019-20 and 2020-21 are allowed.

Order pronounced in the open Court on 27/03/2026

**Sd/-**  
**OM PRAKASH KANT**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 27/03/2026**

*Prabhat*

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order

Assistant Registrar  
ITAT, Mumbai